

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:DOM:IT&A:01
SPR-104877-97

date: JUN 3 1997

to: Acting Assistant Commissioner
(Electronic Tax Administration) T:ETA
Attention: Patricia Hudak

from: Chief, Branch 1
Income Tax and Accounting Division CC:DOM:IT&A

subject: Personal Identification Number (PIN) Signature for BMF
(Form 941) On-Line Filing

This memorandum responds to your inquiry regarding the use of a Personal Identification Number (PIN) as a signature for BMF (Form 941) On-Line Filing.

FACTS

You are developing the BMF (Form 941) On-Line Filing Program to supplement the existing BMF (Form 941) Electronic Filing (ELF) Program. The On-Line Program will allow smaller businesses to use off-the-shelf tax preparation software to create and transmit 941 returns electronically. The On-Line Program will be an alternative to using professional reporting agents as transmitters in the ELF system.

The On-Line Filing Program will generally follow the same rules as the 941 ELF Program. Business owners will be responsible for obtaining a PIN to be used as a signature. A taxpayer will be able to request a PIN through the Letter of Application (currently used in the 941 ELF Program) filed electronically. However, in order to preserve the confidentiality of the PIN, the Service will mail the PIN to the requesting business and will not transmit the PIN electronically to the business.

One stated difference between the 941 ELF Program and the 941 On-Line Filing Program is that the on-line software package will contain the phone number of a third-party transmitter. The transmitter will be responsible for batching returns and electronically transmitting returns to the appropriate service center. You indicate that, unlike the reporting agent employed in the 941 ELF Program, the transmitter in the 941 On-Line Program will not need its own PIN signature because the transmitter is not authorized to sign or file returns on behalf

of the business. Rather, the transmitter in the On-Line Program will act merely as a conduit to transmit returns to the Service.

ISSUE

Whether the Secretary may prescribe a PIN signature for returns filed electronically under the BMF (Form 941) On-Line Filing Program.

CONCLUSION

Sections 6061 and 6065 of the Internal Revenue Code require that returns, statements, and supporting documents be signed to authenticate and verify the filed document. The Secretary may prescribe a PIN signature that reliably authenticates and verifies the BMF (Form 941) on-line filing.

ANALYSIS

Under section 6061 of the Code, except as provided by sections 6062 and 6063 relating to corporate and partnership returns, respectively, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations must be signed in accordance with the forms or regulations prescribed by the Secretary.

Section 6062 of the Code provides that the return of a corporation must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or other officer duly authorized to sign. Similarly, under section 6063, the return of a partnership made under section 6031 must be signed by any one of the partners.

Section 6065 of the Code and the regulations thereunder require that any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations must contain or be verified by a written declaration that it is made under penalties of perjury.

The signature requirement is for purposes of authenticating and verifying the return or other document submitted. First, the signature authenticates the return by identifying the return as the return of the signer. Second, the signature operates to confirm the truth, correctness, and completeness of the return.

Section 301.6061-1(a) of the Procedure and Administration Regulations provides that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

In prescribing a particular signature method, the Service must be satisfied that the signature reliably authenticates and verifies the return. Reliability is ultimately a factual question, and, in the present situation, the business decision for the Commissioner is whether the PIN as a signature would adequately authenticate and verify the document.

Confidentiality (or "integrity") of the PIN is a major factor in determining reliability. Effectively, unless the PIN is kept confidential between the taxpayer and the Service, a taxpayer could argue that a third party with access to the PIN signed the return without the taxpayer's consent. Of course, that would be an invalid, unsigned return from the taxpayer's perspective; and, a court could agree. Therefore, the Service should establish procedures to ensure the confidentiality (or "integrity") of the PIN.

To ensure confidentiality, you propose/



DF

If you need further assistance, please contact Donna Welch (622-4910).

GEORGE J. BLAINE

cc: P. Dowling
T. Baker
L. Fernandez
S. Toomey
W. Wallace